

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES M. BLAIR,

Plaintiff,

v.

ALASKAN COPPER AND BRASS CO.,

Defendant.

Case No.: C07-1877RAJ

FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
DIRECTION FOR ENTRY OF
JUDGMENT

This matter came on for bench trial beginning Monday, April 27, 2009. Plaintiff James Blair appeared *pro se*. Defendant Alaskan Copper & Brass Co. ("Alaskan Copper") was represented by Brendan Monahan of Stokes Lawrence, P.S. At the close of Mr. Blair's case and following three days of testimony, Alaskan Copper moved for judgment on partial findings under Federal Rule of Civil Procedure 52(c). Being fully advised, the Court granted Alaskan Copper's Rule 56(c) motion. The court has adopted many of the proposed findings of fact and conclusions of law (Dkt. # 110) submitted by Alaskan Copper at the conclusion of the bench trial.

I. FINDINGS OF FACT

Background

1. Alaskan Copper is a Seattle-based metal materials supply business. The Company fills orders from a warehouse in Renton, Washington. Mr. Blair was hired to work in

1 the Renton warehouse on May 9, 2006. Mr. Blair was terminated by Alaskan Copper on
2 December 18, 2006.

3 2. During the course of his employment, Mr. Blair filed two EEOC Charges. The
4 first alleged race discrimination and hostile work environment. The second alleged race and age
5 discrimination, retaliation and hostile work environment. Following his termination, Mr. Blair
6 filed a third EEOC charge which alleged race and age discrimination, retaliation and hostile
7 work environment. All three charges were dismissed by the EEOC.

8 3. Following his termination, Mr. Blair filed a labor grievance to contest his
9 termination. He was represented by his Union in the arbitration hearing.

10 4. Subsequently, Mr. Blair filed this lawsuit. He alleged race and age
11 discrimination, retaliation, hostile work environment and “whistleblowing.” Alaskan Copper
12 moved for summary judgment. On April 9, 2009, the court granted summary judgment against
13 Mr. Blair’s age and whistleblowing claims and found that remaining claims survived for trial.
14 Dkt # 85.

15 **Mr. Blair’s Employment, Discipline and Termination**

16 5. When Mr. Blair was hired at Alaskan Copper, he was assigned to work the second
17 shift in a crew of 11 employees under the supervision of Kevin Lord.

18 6. The first 90 days of employment are considered by management to be an informal
19 trial period. During this period Mr. Blair was basically a good employee, but he had problems
20 getting along with other employees.

21 7. Mr. Lord orally cautioned Mr. Blair two times during the probationary period and
22 recorded the underlying incidents in written reports. On July 13, Mr. Blair and another employee
23 was cautioned regarding a confrontation. Ex. 200. On July 20, Mr. Lord found Mr. Blair yelling
24 at another employee and counseled Mr. Blair regarding his behavior. Ex. 201.

25 8. After 90 days, Mr. Blair’s problems with co-workers intensified and Mr. Lord
26 recorded additional hostile confrontations between Mr. Blair and other employees on August 10
27 and September 1. Exs. 202 and 203. On September 5, Mr. Lord had to move another employee

1 off of Mr. Blair's station because Mr. Blair was snapping at him. Mr. Lord recorded the
2 following in connection with that incident. "James is upset that he doesn't get to work with Fred
3 Davis today and is acting out. James has a hard time working with other employees. James
4 makes derogatory statements to others and has been warned to stop." Ex. 204.

5 9. Mr. Lord completed a total of five incident reports regarding Mr. Blair before a
6 first written caution was issued to Mr. Blair.

7 10. At trial, Mr. Blair testified that the Mr. Lord's incident reports were fabricated by
8 Alaskan Copper following Mr. Blair's termination, and that Alaskan Copper's counsel also
9 fabricated letters to the EEOC from Alaskan Copper with the incident reports as attachments.
10 The court finds Mr. Blair's testimony in this regard wholly incredible, and notes that much
11 objective evidence establishes that Mr. Lord prepared the incident reports more or less
12 contemporaneously with the recorded incidents.

13 11. Mr. Blair complained of discrimination for the first time on September 5, 2006.
14 He wrote a letter to Alaskan Copper's Human Resources Manager, Robin Murphy, and copied
15 other members of Alaskan Copper's management. Ex. 1.

16 12. Alaskan Copper investigated Mr. Blair's complaint and found nothing to suggest
17 discrimination. Ms. Murphy and Operations Manager, James Brown, testified that Mr. Blair had
18 no specific examples of discrimination. Ms. Murphy and Mr. Brown testified that Mr. Blair
19 complained that Mr. Lord favored his friends and generally mistreated everyone else. As
20 described below, Mr. Blair's testimony at trial regarding alleged discrimination supports the
21 testimony of Ms. Murphy and Mr. Brown regarding the lack of substance contained in
22 Mr. Blair's complaints.

23 13. After his first complaint to management, Mr. Blair's problems on the job
24 continued and Mr. Lord continued to document those problems. Mr. Lord recorded complaints
25 from other employees and his own difficulties managing Mr. Blair. Exs. 205-207 . Mr. Lord
26 testified credibly at trial regarding the incidents underlying his various incident reports and
27 Mr. Blair's inability to work with any other employees.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1 14. A number of witnesses testified credibly about Mr. Blair's inability to get along
2 with other employees. This includes Ms. Murphy, Alaskan Copper Superintendent Ed
3 Cartwright, Mr. Lord and shop steward Anthony Britton. The only person who appears to have
4 gotten along with Mr. Blair was Fred Davis, a long time Alaskan Copper employee who initially
5 trained Mr. Blair and was called by Mr. Blair as a witness during trial. Mr. Davis testified about
6 Mr. Blair's inability to work with others and explained that even he could not communicate with
7 Mr. Blair as time went on.

8 15. Mr. Blair's own testimony confirmed his inability to get along with others. He
9 testified about problems he had with a number of other employees, black and white. Mr. Blair
10 testified that his confrontations with other coworkers, including black coworkers, created a
11 "hostile environment." Mr. Blair testified that Mr. Lord created a hostile environment for him
12 when he required Mr. Blair to work with people (black and white) that he did not like.

13 16. Mr. Blair was insubordinate to his supervisor. Mr. Lord, Mr. Britton, Mr. Raplee
14 and Mr. Davis testified regarding their observations of Mr. Blair's insubordination. Mr. Blair
15 admitted insubordination in his own testimony - repeatedly describing his open disrespect for his
16 supervisor. Mr. Davis testified that plaintiff displayed anger and disrespect for Mr. Lord and that
17 he believed that this was the primary reason for the treatment that Mr. Blair received.

18 17. On September 25, Mr. Blair wrote a second letter to Alaskan Copper
19 Management, complaining about discrimination. The letter contained no factual detail. Alaskan
20 Copper requested factual detail. Mr. Blair cited discrimination in cross-training. He told Mr.
21 Brown that no black employees were allowed to drive lift trucks. At trial, however, Mr. Blair
22 admitted that he drove lift trucks, as did other black warehouse workers such as Mike Jenkins.

23 18. On September 26, shift lead Mr. Raplee received a complaint regarding Mr. Blair
24 from another African American employee, Mark Surratt. Mr. Raplee reported the complaint to
25 Mr. Lord. Mr. Lord testified that he spoke with Mr. Surratt and then attempted to speak with
26 Mr. Blair, who "exploded." He yelled "Fuck the Union, Liars" etc. He screamed and yelled at
27 Mr. Lord. He said, "You're going to get yours" and kept calling Mr. Lord a "dog." Mr. Lord

1 told Mr. Blair to clock out and go home to keep the situation from escalating. Mr. Blair refused.
2 Mr. Lord told Mr. Blair that he would call the police if Mr. Blair did not leave. Mr. Blair
3 punched out and went home 20 minutes early.

4 19. The September 26 incident was witnessed by Mr. Britton, union steward, and by
5 Fred Davis. Both men testified consistently with Mr. Lord.

6 20. Mr. Cartwright participated in the decision to issue a written caution in
7 connection with the September 26 incident. Before issuing the written caution, he reviewed the
8 incident reports regarding Mr. Lord's past problems with Mr. Blair.

9 21. The day after Mr. Blair received the written warning, he filed his first charge with
10 the EEOC (September 29, 2006). Ex. 9. The charge alleged discrimination on the basis of race
11 and retaliation for his internal complaints of discrimination. Alaskan Copper investigated the
12 charge and found no evidence to substantiate Mr. Blair's claims. The EEOC ultimately
13 dismissed the charge.

14 22. On October 6, Mr. Lord had another incident of insubordination with Mr. Blair.
15 He instructed Mr. Blair to fix a mistake on an order. Mr. Blair resisted. After Mr. Blair finally
16 corrected the error with only one half hour left in his shift, Mr. Lord directed Mr. Blair to finish
17 the bundle he was working on before the shift ended. When he saw Mr. Blair leaving at the end
18 of his regular midnight shift, Mr. Lord told Mr. Blair he was not finished and he would be
19 disciplined if he did not finish the bundle. Mr. Blair left anyway.

20 23. Mr. Blair was suspended for two days beginning October 9, 2006 for
21 insubordination and failing to follow his supervisor's instructions. This was progressive
22 discipline pursuant to Company policy for the incident that had occurred on October 6. The
23 disciplinary action notice was as follows:

24 At 11:10 P.M., 6 October '06, you refused to listen to your
25 supervisor giving you instructions. Then you told your supervisor
26 you would not finish your assigned work. You were insubordinate
27 and refused to complete your work prior to clocking out.
... Follow your instructions and conduct yourself in a courteous
manner. *Next probable action termination.*

1 Ex. 211 (emphasis added).

2 24. On October 9 2006, the day that Mr. Blair's suspension began, he sent a letter to
3 Mr. Cartwright, complaining again of race discrimination.

4 The body of the letter reads:

5 Would like to meet and talk with you about Kevin Lord.
6 Supervisor procedures which are one-sided and unfair. For
7 instance, treating the black employees different than white
8 employees.

9 Ex. 3.

10 25. Mr. Cartwright testified that he met with Mr. Blair the following day and asked
11 for examples of discrimination. At the time, Mr. Blair asserted that black employees were not
12 allowed to drive lifts, an assertion that he admitted was not true at trial. Mr. Blair told
13 Mr. Cartwright that Mr. Lord favors his friends and gave an example of Mr. Lord letting
14 Mr. Raplee come to work drunk. The only other evidence of discrimination Mr. Blair provided
15 to Mr. Cartwright was that "all of management is white." Mr. Cartwright is Asian.
16 Mr. Cartwright testified that he also knew that Alaskan Copper had several minority supervisors.

17 26. Mr. Cartwright testified regarding his investigation of Mr. Blair's claims. Like
18 Ms. Murphy, he discovered that employees in the warehouse, including African-American
19 employees, thought Mr. Blair was the problem. Mr. Cartwright concluded that Mr. Blair had
20 significant issues getting along with other employees in the workplace. He shared the results of
21 his investigation with Ms. Murphy, and she shared her findings relating to her own prior
22 investigation of Mr. Blair's first EEOC charge. Like Ms. Murphy, Mr. Cartwright found no
23 evidence of discrimination. Mr. Cartwright determined that Mr. Raplee was not drinking on the
24 job or coming to work drunk.

25 27. In the Fall of 2006, Alaskan Copper conducted warehouse promotions. The
26 Collective Bargaining Agreement ("CBA") establishes multiple "levels" of warehouse
27 employees, starting at "associate," going to "warehouseman," to "senior," and then to "master"
with increasing hourly premiums at each stage. Promotions were scheduled regularly to

1 maintain company-wide ratios set by the CBA. In the Fall of 2006 Mr. Blair, as an associate
2 warehouseman, was eligible (with all other associate warehousemen) for promotion to senior status.

3 28. Mr. Lord testified regarding the promotion selection process, which was as
4 follows: The warehouse shift supervisors from all shifts at both the Renton and Seattle locations
5 submitted evaluation sheets on every employee with 21 rating categories and a comments
6 section. Shift supervisors did not know which level of promotions were available, nor did they
7 know the number of promotions available – generally, in their location, or on their particular
8 shift. The superintendent (at the time, Mr. Cartwright) reviewed all evaluation forms and ranked
9 them in order. Then he met with all of the supervisors to discuss the applicants.

10 29. Only one employee on the second shift at the Renton Warehouse was selected for
11 promotion, Josh Desmarais. Mr. Desmarais is white. At the time, Mr. Lord felt that
12 Mr. Desmarais was his best employee and more qualified for promotion than anyone else on the
13 shift. Mr. Blair had excellent attendance and good skill scores. He did not get promoted over
14 Mr. Desmarais because his scores were not as good and because of his established inability to get
15 along with others in the workplace.

16 30. On December 15, Mr. Blair filed another charge with the EEOC, objecting to
17 selection of two fellow employees for promotion over him. Ex. 10. He complained of continued
18 “harassment, intimidation and discrimination because of my race and in retaliation for having
19 filed a charge of discrimination with the EEOC.” *Id.* This second EEOC charge, like the first,
20 was ultimately dismissed.

21 31. Mr. Blair was terminated for inadequate performance, specifically insubordination
22 and failing to follow instructions, following an incident on December 15, 2006.

23 32. The final events began on the night of Friday, December 15. Mr. Blair was
24 working at a processing station filling orders. The published process, which Mr. Blair had
25 received, requires that all orders be checked for count accuracy by a second employee after the
26 other employee fills them. This is established and documented procedure in the warehouse. On
27 the night of December 15, Mr. Blair filled an order that called for four items. He made a mistake

1 and only packed three items. After incorrectly filling the order and completing the paperwork,
2 Mr. Blair acted as his own “checker.” Mike Jenkins was the driver who was set to take the order
3 to Seattle. He noticed that it was incorrectly filled and informed Mr. Raplee. Mr. Raplee was
4 the shift lead and had responsibility for quality control.

5 33. Mr. Raplee asked Mr. Blair to fix the order and the paperwork. Mr. Blair fixed
6 the order – adding a fourth piece, but refused to fix the paperwork. He was angry and
7 aggressive. He said “Just change the three to a four, what’s the big god damn deal?” and turned
8 his back and walked away from Mr. Raplee. Mr. Raplee reported the matter to Mr. Lord.

9 34. Before the second shift began on Monday, December 18, Mr. Lord contacted
10 Mr. Cartwright to advise him about what had happened on December 15. Mr. Cartwright told
11 Mr. Lord to talk to Mr. Blair about the matter. Mr. Lord spoke with Mr. Blair and reported the
12 result in a written statement:

13 I went out to James with a copy of sales order #377510 that was
14 improperly filled to talk to him about his behavior on Friday
15 (12/15/06) when the lead warehouseman approached him to have him
16 fix the paperwork and add a piece to the bundle he made short. I
17 showed James the copy and asked him why he refused to fix the
18 paperwork himself; he responded he had no idea what the hell I
19 was talking about and denied ever saying anything to the lead at
20 all. At this point I described the error he made to him and he got
21 mad started swinging his arms around and said he never did that
22 shit and he did use the scale. I then tried to hand James a copy of
23 the sales order and he turned his back on me and told me in a
24 yelling voice I didn’t do that shit, at that point I asked James to
25 calm down and stop yelling at me and listen to what I had to say. I
26 pointed out on the order were [sic] James had not followed
27 instructions by one filling and checking the order himself and two
were [sic] he had written the quantity shipped in as 3 not 4. James
then yelled I told you man I didn’t do that fucking shit, I then told
James to go to the break room and calm down, he laughed at me
turned around and walked over to the printer and continued to
work. I followed him and told him he needed to leave the order on
the printer and go to the break room like he asked and he said he
would when he was done with the order he was doing. At that
time I let James know that if he refused to do what I asked him he
would have to clock out and go home for not following
instructions. James started to walk back to his station and I asked
him if he didn’t hear me when I told him to put the order down and
go directly to the break room, he stopped at that point stared at me
for a moment tossed the order on the printer and stomped into the
break room mumbling under his breath.

1 Ex. 216.

2 35. Mr. Lord testified credibly regarding the underlying incident and the Court finds
3 that it was consistent with the contemporaneous written record. Mr. Lord also testified that he
4 called Mr. Britton, the shop steward, and visited Mr. Blair in the break room. When he was
5 talking with Mr. Blair, Mr. Blair started cutting him off and raising his voice again and Mr. Lord
6 told him to go home and see Mr. Lord for his discipline action before clocking into work the next
7 day. Mr. Britton witnessed the confrontation between Mr. Lord and Mr. Blair and testified
8 consistently.

9 36. Mr. Lord forwarded his report to Mr. Cartwright with statements signed by
10 Mr. Raplee and another witness, Mr. Brogan. Exs. 217-219. After consideration by the upper
11 managers, the final step in the disciplinary progression was agreed upon. Mr. Lord,
12 Ms. Murphy, Mr. Brown and Mr. Cartwright were involved and testified that they considered
13 Mr. Blair's work history and discipline record. The following day, December 19, Mr. Lord gave
14 Mr. Blair was given his termination notice. The notice stated:

15 You failed to follow the instructions of your shift lead and the
16 order processing instructions. On sales order 377510 you failed to
17 follow company order processing instructions by signing both the
18 order 'filler' and 'check by' block which requires a second
19 warehouseman/order filler. You also recorded the wrong quantity
20 and weight. When instructed by your lead to fix the problem you
21 refused and became very confrontational and insubordinate. You
22 were approached by your supervisor for failing to follow the
23 instructions of your lead and insubordinate behavior. You
24 repeatedly failed to follow your supervisor's instructions and
25 became insubordinate and confrontational. This failure to follow
26 instructions and disruption of the workplace cannot be tolerated.

27 Ex. 219.

37. Mr. Blair's testimony about the December 15 incident and its aftermath was that
Mr. Lord and/or Mr. Cartwright had modified his correct work order and confronted him about it
in an effort to manufacture a disciplinary incident, and that they were aided and abetted by
Ms. Murphy, Mr. Raplee and Mr. Jenkins. The Court finds Mr. Blair's testimony incredible, and

1 finds that the consistent testimony of numerous Alaskan Copper witnesses was credible as to the
2 incident.

3 **Lack of Evidence of Alleged Discrimination and/or Retaliation**

4 38. Although Mr. Blair claims that he was treated differently because of his race or in
5 retaliation for protected activity, he provided no credible evidence of discriminatory or
6 retaliatory conduct. With respect to any action taken against him, Mr. Blair did not offer
7 evidence that other employees were treated more favorably in similar circumstances, much less
8 that any action taken against him was motivated by his race or his protected employment
9 activity.

10 39. Through the course of the trial, an as an example of Mr. Lord's alleged preference
11 for white workers, Mr. Blair repeatedly alleged that Mr. Lord allowed his friend Mr. Raplee to
12 come to work under the influence of alcohol. The court finds that there is no evidence, other
13 than the testimony of Mr. Blair, that Mr. Raplee ever came to work drunk or under the influence
14 of alcohol. The Court finds that Mr. Blair's testimony on this issue is speculation, at best.
15 Mr. Blair did not testify that he, or any other African American employees, or any other
16 employees who had made workplace discrimination complaints, were *not* allowed come to work
17 drunk and thus treated in a disparate manner.

18 **II. CONCLUSIONS OF LAW**

19 1. At trial, Mr. Blair presented three pairs of claims under analogous state and
20 federal statutes: Race discrimination claims, retaliation claims and hostile work environment
21 claims. Mr. Blair had the burden of proving each of his claims by a preponderance of the
22 evidence.

23 **Disparate Treatment Race Discrimination**

24 2. Mr. Blair alleged that Alaskan Copper disciplined, failed to promote and
25 ultimately terminated him, because of his race. He plead discrimination claims under 42 U.S.C.
26 § 2000(e) *et. seq.* ("Title VII") and RCW 49.60.180 ("WLAD"). In either case, Mr. Blair bears
27 the ultimate burden of proof: to show by a preponderance of the evidence that a challenged

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1 employment decision occurred “because of race.” *Costa v. Desert Palace, Inc.* 299 F.3d 838,
2 856-57 (9th Cir. 2002)(en banc), *aff’d*, 539 U.S. 90 (2003); and RCW 49.60.180(2); *Mackay v.*
3 *Acorn Custom Cabinetry, Inc.*, 127 Wn.2d 302, 306, 898 P.2d 284 (1995). Under federal law, a
4 challenged employment decision is “because of race” if race was a “motivating factor” in the
5 decision. *Id.* at 856-7. Under Washington state law, the “substantial factor” test applies. *See*
6 RCW 49.60.180, *Mackay*, 127 Wn.2d 302 at 307.

7 3. Disparate treatment of similarly situated individuals can be circumstantial
8 evidence of discriminatory intent. *Smith v. Allen Health Sys., Inc.*, 302 F.3d 827, 835 (8th Cir.
9 2002); *Aragon v. Republic Silver State Disposal Inc.*, 292 F.3d 654 (9th Cir. 2002). However,
10 the “similarly situated” analysis is stringent. *See Moran v. Selig*, 447 F.3d 748, 754 (9th Cir.
11 2006) (quoting *McGuinness v. Lincoln Hall*, 263 F.3d 49, 53-54 (2d Cir. 2001)) (plaintiff in the
12 protected class must be “similarly situated in all material respects” to the employees who are
13 allegedly treated more favorably); *Wilson v. B/E Aerospace, Inc.*, 376 F.3d 1079 (11th Cir. 2004)
14 (holding that “[t]he comparator must be nearly identical to the plaintiff to prevent courts from
15 second-guessing a reasonable decision by the employer”) and *Stotts v. Memphis Fire Dept.*,
16 858 F.2d 289, 299 (6th Cir. 1988) (plaintiff failed to establish employer disparately punished him
17 for fights because of his race, because plaintiff was not similarly situated with respect to white
18 employees with less serious discipline records).

19 4. The Court concludes that Mr. Blair has not proven that race was even a partial
20 motivation for any of the adverse employment actions he was subjected to. There is no evidence
21 of racially discriminatory comments or slurs. There is no evidence that similarly situated non-
22 minority employees were treated differently than Mr. Blair on any occasion or generally. The
23 testimony of all the witnesses and the documentary evidence they reviewed show instead that
24 any adverse employment actions were the result of Mr. Blair’s work performance, primarily his
25 difficulty getting along with his co-workers and his supervisors.

Retaliation

5. Mr. Blair alleged that Alaskan Copper disciplined, failed to promote, and ultimately terminated him, in retaliation for his discrimination complaints. He plead retaliation claims under 42 U.S.C § 2000(e) (“Title VII”) and RCW 49.60.210(1) (“WLAD”). To prove retaliation, Mr. Blair must establish (1) that he engaged in or was engaging in a statutorily protected activity under federal law, (2) that the Alaskan Copper subjected Mr. Blair to an adverse employment action; and (3) that Mr. Blair was subjected to the adverse employment action because of his engagement in protected activity. *Raad v. Fairbanks North Star Borough Sch. Dist.*, 323 F.3d 1185, 1196-97 (9th Cir.2003); *Allison v. Housing Authority of Seattle*, 118 Wn.2d 79, 96, 821 P.2d 34 (1991). Under federal law, he must prove that his engagement in protected activity was at least a motivating factor for any adverse action. *Stegall v. Citadel Broad. Co.* 350 F.3d 1061, 1067-68 (9th Cir. 2004). Under state law, he must prove that his engagement in protected activity was a substantial factor. *Schonauer v. DCR Entertainment, Inc.*, 79 Wn. App. 808, 827, 905 P.2d 392 (1995), *citing Allison*, 118 Wn.2d at 96, and *Delahunty v. Cahoon*, 66 Wn. App. 829, 832 P.2d 1378 (1992).

6. Mr. Blair filed at least three EEOC complaints and the Court finds that filing those complaints is a protected activity. However, based upon the totality of the evidence presented at trial, Mr. Blair did not prove that Alaskan Copper took any action against him, either entirely or in part, because he filed EEOC complaints or made other internal complaints about discrimination. Instead, the court credits the testimony of many witnesses who testified that the reason for the actions they took against Mr. Blair was his unprotected conduct, not his discrimination complaints. Testimony of non-decision makers regarding their observation of Mr. Blair in the workplace only corroborates decision maker testimony. In fact, if anything, the evidence reflects that individuals allegedly taking action were either unaware of the existence of the complaints, or that discipline occurred prior to his complaints. Protected activity was not a motivating or substantial factor in any adverse employment action.

Hostile Work Environment

7. Mr. Blair claims that he was subject to a hostile work environment based upon his race and/or his protected activity (i.e. discrimination complaints). He plead the same claim under analogous federal and state statutes, 42 U.S.C. § 2000(e), *et seq.*, (“Title VII”) and RCW 49.60.180(3) (“WLAD”).

8. To prevail on his hostile work environment claims, Mr. Blair must establish that (1) he was subjected to verbal or physical conduct because of his race or protected activity; (2) the conduct was unwelcome; (3) the conduct was sufficiently severe or pervasive to alter the conditions of his employment and create a racially abusive work environment. *Fuller v. City of Oakland, California*, 47 F.3d 1522, 1527 (9th Cir. 1995); *Manatt v. Bank of America*, 339 F.3d 792, 798 (9th Cir. 2003) (citing *Kang v. U. Lim Am., Inc.*, 296 F.3d 810, 817 (9th Cir. 2002)); *McGinest v. GTE Service Corp.*, 360 F.3d 1103, 1116 (9th Cir. 2004) (conduct must be extreme, creating a work environment that is both subjectively and objectively hostile, from the perspective of a reasonable person of the plaintiff’s protected class). These elements are the same under Washington State law. *Glasgow v. Georgia-Pacific Corp.*, 103 Wn.2d 401, 406-407, 693 P.2d 708 (1985).

9. Mr. Blair presented no evidence that he was subjected to any conduct because of his race or any protected activity. He presented no evidence that he was subjected to conduct that was subjectively or objectively hostile because of the fact that he is African-American. Mr. Blair testified that his supervisor made him sign documents and forced him to work with people with whom he did not want to work. He testified that Mr. Lord was a bad supervisor and that he had a hostile management style that led to complaints by “everybody.” There is no evidence of any racial comments or slurs, or that any verbal or physical conduct directed from Mr. Lord to Mr. Blair was motivated by any impermissible factor. To the contrary, Mr. Lord’s actions were job-related and consistently applied to all employees on Mr. Lord’s shift. The “hostile environment” about which Mr. Blair complains also includes confrontations with virtually every other employee on his shift, including black employees. Mr. Blair suggests that

1 these confrontations may have been orchestrated by Mr. Lord as a form of harassment.
2 Mr. Blair's inability to get along with others was well established at trial. There is no evidence
3 to connect Mr. Lord to anything that any of Mr. Blair's coworkers may have said or done to him.
4 Finally, there is no evidence that any co-worker conduct was racially motivated or motivated by
5 retaliatory animus. Mr. Blair's conflicts resulted from his own attitude and non-protected
6 behavior and had nothing to do with his race or any other impermissible factor.

7 **III. Judgment**

8 The Court directs the Clerk to enter Judgment for Alaskan Copper.

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10 DATED this 10th day of July, 2009.

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14 The Honorable Richard A. Jones
15 United States District Judge
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